

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

No. 1:22-cr-00068-SE
July 8, 2022
3:36 p.m.

KYLE MORRIS,

Defendant.

* * * * *

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE SAMANTHA D. ELLIOTT

APPEARANCES:

For the Government: Anna Z. Krasinski, AUSA
United States Attorney's Office

For the Defendant: Charles J. Keefe, Esq.
Wilson Bush & Keefe, PC

U.S. Probation: Karin Hess

Court Reporter: Brenda K. Hancock, RMR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1454

P R O C E E D I N G S

THE CLERK: All rise for the Honorable Court. Please be seated.

Court is in session and has for consideration a motion hearing in United States of America versus Kyle Morris, criminal case number 22-cr-68-1-SE.

And, for the record, can I have counsel identify themselves.

MS. KRASINSKI: Anna Krasinski on behalf of the government.

MR. KEEFE: Charles Keefe on behalf of Kyle Morris, your Honor.

THE COURT: Thank you. Good afternoon, everybody.

MR. KEEFE: Good afternoon.

THE COURT: Good afternoon, Mr. Morris.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: So, before we consider anything, Mr. Morris, I want to talk to you a little bit about some of your rights. I know that Magistrate Judge Johnstone went over these with you last time and the first time you appeared before her, but I'm going to go over them again. Okay?

THE DEFENDANT: Yes, your Honor.

THE COURT: So, you understand that you have the right not to make any statements?

THE DEFENDANT: I understand.

1 THE COURT: And, if you do make any statements and
2 then you decide to stop, you can stop at any time. Do you
3 understand that?

4 THE DEFENDANT: I understand that.

5 THE COURT: And that anything you do say can be used
6 against you?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Okay. So, do I understand that you no
9 longer want appointed counsel, and you've hired Attorney Keefe
10 to represent you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Okay. Thank you. You can be seated.

13 So, Mr. Morris, we're here today to talk about
14 pretrial confinement. I've read your motions, I've read the
15 government's motions, and I just want to explain what's going
16 to happen today. I see that we have a courtroom full of
17 people.

18 So, before we begin, the government must prove by
19 clear and convincing evidence that no condition or combination
20 of conditions of release will reasonably assure the safety of
21 any other person or the community. Nobody is arguing that
22 there's any risk that Mr. Morris is going to flee.

23 So, I need to review the Magistrate Judge's decision
24 *de novo*. That means I take a brand new look at it. It doesn't
25 mean that we have to recreate the wheel here, but it means that

1 I'm going to look at all of the evidence that you guys present
2 to me, all of the evidence that's contained in the briefings
3 that I've already read, and make my own decision about what
4 should happen at this stage of the proceedings.

5 You understand?

6 THE DEFENDANT: I understand, your Honor.

7 THE COURT: Okay. What I have reviewed so far: I
8 have listened to the June 21st hearing before the Magistrate
9 Judge; I read the Pretrial Services Report; I have reviewed the
10 order of detention pending trial, that's the order that you're
11 asking me to reconsider today; and I've reviewed all of the
12 motions and objections. I want you to know that, because I
13 want you to know that we've looked at this very carefully
14 before we got here today, but I'm also looking forward to
15 hearing from both the government and your attorney before I
16 make any decisions. Okay?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Okay. Attorney Keefe, we're here on your
19 motion, so please proceed.

20 MR. KEEFE: Thank you, your Honor. Good afternoon.

21 Your Honor, we're here, obviously, pursuant to
22 Attorney Levin's motion for the revocation of the detention
23 order, and I'll be up front with what we're asking for. We're
24 asking for the Court to release Kyle on electronic monitoring,
25 that his grandparents, who are here in the courtroom today and

1 live two miles from him, be third-party custodians; obviously,
2 no firearms, no alcohol, no illegal substances, no Internet
3 usage; and, I will get to this secondarily, comply with all
4 mental health and substance abuse recommendations either from
5 Probation, the Court, or the Veterans Justice Program.

6 There's a representative from that program here today
7 who has met with Kyle, and I'll talk about that in a little
8 bit.

9 And, obviously, on top of that any and all other
10 conditions the Court would impose.

11 So, we're not just asking for Kyle to be released,
12 like he did at his original hearing. We're asking for a very
13 strict and limited kind of release here in light of the time he
14 has already spent incarcerated.

15 First, the Court is familiar with Kyle's biographical
16 information. He has with him today a roomful of family and
17 friends and supporters. This is a reflection of who Kyle is
18 right now, and I'd like the Court to not only see that but
19 recognize, in light of the allegations here and the things that
20 have been made public about Kyle's past, all of these people
21 are here today, standing behind him.

22 As the Court knows from the Pretrial Services Report,
23 Kyle has lived his entire life in New Hampshire at -- well, I
24 was going to say 22. He just turned 23 yesterday while
25 incarcerated. He's a homeowner. He, importantly, is a

1 decorated, honorably discharged veteran from the United States
2 Military. He has, while there and the Court saw it, I think
3 it's worth noting that Kyle joined -- he graduated high school
4 early in order to join the United States Army. While there, he
5 served honorably in combat in an FBO in Afghanistan, and this
6 is going to be something I'm going to come back to.

7 As a country, we sent a teenager to war. He was
8 subjected to not only combat there but various people and views
9 that -- a teenager is very impressionable at that age. What
10 Kyle will swear under oath today and will represent through me
11 is that some of the or all of the things that the government
12 cited in its search warrant about that may be considered white
13 nationalist or racist in any way, he denounces all of that.

14 And what the Court will see through the timeline arc
15 of this case, if you look at -- I don't know if you read the
16 search warrant affidavit. Much of the government's evidence,
17 the bulk of it, is from the summer of 2020, and he came home
18 from Afghanistan in February of 2020, and he came home, we went
19 into the pandemic and he was --

20 THE DEFENDANT: 20 years old.

21 MR. KEEFE: -- 20 years old. But through the timeline
22 since then, your Honor, you have a young man who's grown up,
23 who is 23 yesterday, matured and grown away from some of those
24 -- or all of those things, I should say --

25 THE DEFENDANT: Yes.

1 MR. KEEFE: -- that the government cites in its
2 various pleadings to try and incarcerate him or keep him
3 incarcerated. He is in a committed relationship, and that
4 young woman is here today. Importantly, her family is with her
5 today, knowing who Kyle is and knowing what he's accused of and
6 knowing what the government has put in its pleadings and what
7 has been made public about Kyle. Her name is Anna Maria -- I
8 don't want to butcher the last name -- Holodowska?

9 Did I pronounce that correctly?

10 And she, for the most part, lived with Kyle prior to
11 his incarceration. And he, as the Court has seen, is able to
12 afford his home by renting out various rooms to people in his
13 home.

14 I want to talk now about something significant, at
15 least we believe is significant since Kyle was before Judge
16 Johnstone. He has met with and been, at least preliminarily, I
17 think it's fair to say, evaluated by Christopher Dearborn from
18 the Veterans Justice Program. He is here today in the
19 courtroom. They met for approximately one hour, and at the end
20 of that meeting Mr. Dearborn found that Kyle meets the full
21 criteria for a major depressive disorder, for panic disorder
22 with agoraphobia. He reports symptoms related to PTSD, but an
23 additional assessment would be required. PTSD and a mood
24 disorder should be considered within the context of
25 comorbidity, which I understand is existing at the same time,

1 and I will talk about this as well, alcohol and marijuana use
2 disorder that appear to be in full remission. I know the
3 government makes much of marijuana in its effort to keep Kyle
4 behind bars, so I will talk about that.

5 Kyle identified to Mr. Dearborn PTSD anxiety,
6 depression and panic attacks as his primary mental health
7 concerns. They are all related to his deployment in
8 Afghanistan between 2018 and 2019, and they started to grow,
9 which is typical, beginning in the months after he came home.
10 So, in the 2 to 12 months after he returned from service are
11 when these issues grew in Kyle's life.

12 Depression is a primary concern, reflected by a lack
13 of motivation, constant thoughts of death, hypersomnia,
14 decreased optimism, negative thinking and weight gain. Kyle
15 gained 40 pounds when he came home, which is one of the many
16 physical signs of depression. He lost his job that he had
17 because of depression. He reports panic attacks since his
18 return from service. His change in emotional response has
19 developed, again which is typical. He has a physical response
20 to yelling, his startle reaction has increased, and he is what
21 would be described as hypervigilant. He's also had negative
22 changes in thinking, low self-concept, emotional lability and
23 anger and sense of a shortened future.

24 These are, sadly, common traits of young men who see
25 combat and then come home without the proper support. And

1 Kyle's getting that now; Mr. Dearborn is offering those
2 services. And although, and Mr. Dearborn was frank, he said
3 Kyle appears to minimize his exposure to potential trauma
4 related to his FOB deployment, being subjected to routine
5 mortar fire, he did report a three-day attack firefight that to
6 this day causes him stress.

7 He has nightmares, which is no surprise, problems with
8 anxiety, including fatigue, concentration, irritability, lack
9 of sleep, and, which is a sad cycle many people get in, he
10 worries about having panic attacks because of what he
11 experiences during a panic attack.

12 He agrees with Mr. Dearborn that he could be
13 perseverative, angry and have worrisome thoughts about
14 politics. His symptoms of anxiety are not mutually exclusive
15 from combat trauma symptoms. According to Kyle's interview
16 with Mr. Dearborn, he had mild problems with panic attacks in
17 September of 2020, but by the end of the year they grew into
18 full panic attacks.

19 He agreed -- and it's something that I guess I'll talk
20 about now, is the marijuana. He agreed with Mr. Dearborn that
21 he smoked a lot of marijuana after he was discharged from the
22 Army, and he generally stopped in approximately September 2020.
23 He believes, his best memory is, the last time he smoked
24 marijuana was either in December of 2021 or New Year's Eve, New
25 Year's Day of 2022.

1 The government has pictures of marijuana and web
2 searches related to marijuana and I think text or messages
3 related to marijuana. They can't say when the last time Kyle
4 smoked marijuana was. Although the Pretrial Services Report I
5 think indicates Kyle wasn't able to produce a urine sample when
6 he first came in, he was -- and he was clean; he didn't have
7 any marijuana in his system. The government can't say when the
8 last time he smoked marijuana or the last time the very small
9 bong they found in his bedroom was used, and the amount of
10 marijuana they found in his bedroom is a violation-level
11 offense in New Hampshire. He would get a ticket for it, if the
12 Salem Police had located that.

13 He has stopped drinking alcohol approximately a year
14 ago. However, Mr. Dearborn would testify that that's an Axis I
15 diagnosis. At this point he would need to do further clinical
16 assessment for Axis II and III.

17 However, importantly, Mr. Dearborn is willing to
18 coordinate and work with Kyle to get him substance abuse,
19 psychological, mental health services, whatever the Veterans
20 Administration can provide Kyle, including a further mental
21 health assessment to diagnosis him on Axis II and III to see
22 what other services he needs, and that would obviously be in
23 conjunction with probation.

24 As the Court is aware, Kyle has zero criminal history.
25 He had never been arrested.

1 I don't have -- I don't think there was even any
2 indication of a motor vehicle offense on your record.

3 So, this is someone who's not only received many
4 medals through the United States Army for service; he has no
5 criminal record whatsoever. The Court has seen both in
6 Attorney Levin's motion and I think in the Pretrial Services
7 Report the medals that Kyle received while he was in the Army.

8 The people in the home where Kyle lives to whom he
9 rents, that nobody has a criminal record. Again, they are
10 aware of what Kyle is charged with. I think there is a cat in
11 the home or a hamster or something like that, so there are no
12 dangerous animals in the home. Nobody has a criminal record.

13 Kyle's family ties are immense, as reflected here.
14 The government relies on two family members in their case, at
15 least that we're aware of at this point. One is Kyle's
16 estranged wife, who I think in the search warrant application
17 is described as S1. So, there is an understanding why an
18 estranged ex-wife may not have the best things to say about an
19 estranged ex-husband. And S2, the other family member, who
20 claims to have known Kyle for many years, is his aunt, who
21 doesn't know who Kyle is anymore.

22 Is that fair to say?

23 THE DEFENDANT: I rarely see her, yes.

24 MR. KEEFE: Rarely sees her. These are the people
25 (indicating) who sees Kyle every day in his life and are here

1 to support him, should the Court allow his release.

2 He has three grandparents, all live in New Hampshire.
3 Two are in Salem, the two grandparents to whom we're asking the
4 Court release him as third-party custodians, and one in
5 Merrimack, New Hampshire. His sister, who is here today, lives
6 in New Hampshire. As I said, he as an incredibly strong
7 relationship with his girlfriend, Anna.

8 I want to switch gears at this point, your Honor. The
9 government wants to keep Kyle detained for several reasons and
10 factual allegations. I want to talk about timeline here. The
11 government conducted the search of Kyle's home where the
12 subject firearms were located in February of 2022, more than
13 four months prior to his arrest or approximately four months.
14 So, for four months the government was aware of all the
15 information that it's brought before your Honor to keep him
16 detained, and they didn't seek an arrest warrant to immediately
17 get him in custody and get him on pretrial release or have him
18 detained. They were okay with having him in the community for
19 four months.

20 In June of 2021 it appears they obtained his cell
21 phone or records from his cell phone. They cite to
22 conversations. And, again, as I said earlier, the bulk of
23 their evidence seems to revolve around the summer of 2020. In
24 the search warrant application they talk about a conversation
25 in July of 2020 about selling an AK-47. There are other

1 messages about either white nationalist or could be construed
2 as racist from July of 2020. I want to point out that was two
3 years ago. He was 20 or 21, just turned 21 at that point. The
4 young man not only has grown up, but there is a staleness issue
5 which is going to be addressed in a motion to suppress, but
6 also the Court should consider the staleness when it's
7 considering whether to detain Kyle at this point.

8 For all of the information the government relies upon
9 here, there's no intention he ever actually physically did
10 anything. The government cites to a lot of words, but there's
11 no allegations that he made physical steps to harm anyone, and
12 I think that's important for the Court to realize. They
13 approached him in May of 2021, so he was aware that he was
14 being investigated. On the day he was arrested he actually
15 offered to turn himself in. He has demonstrated by not
16 committing any acts of violence that he is not a danger.

17 The investigation continued since that point. In July
18 of '20, again, talking about the timeline, the government spoke
19 to an informant. In October of 20 Kyle reached out to agents.
20 The government apparently seized through the mail World War II
21 paraphernalia. They focus on, and they do this in their
22 objection to Attorney Levin's motion, German Nazi memorabilia
23 that was found in his home. What they don't disclose that was
24 also in the home from World War II and World War I were United
25 States Military paraphernalia, Russian paraphernalia,

1 Yugoslavian paraphernalia, Italian as well. So, the government
2 wants to focus on just one small slice of everything that was
3 in the home.

4 The web search results that the government relies upon
5 are from 2018, five years ago, 2019 and 2020. The notes that
6 it cites found in his phone are from 2019 and 2020. The photos
7 of the marijuana are from 2020. This young man is not a
8 danger, your Honor. He has no arrests. He's demonstrated no
9 acts of violence, and there's no evidence of him ever doing
10 anything violent or threatening to anyone.

11 There's something else I'd like to touch upon, is the
12 government has used the phrase "abusing marijuana." We can
13 have an argument about whether that even makes sense, to say
14 that somebody abuses marijuana. The government does not have
15 any evidence that Kyle regularly smoked marijuana. Again, he
16 would testify under oath that the last time that he smoked was
17 in December of 2021 or January of 2022. He can't remember. He
18 doesn't like it because of the way it makes him feel. As the
19 panic attacks and PTSD have grown, the marijuana has actually
20 hurt him in a way. It's made him feel worse.

21 The government also relies upon, and I'll talk about
22 this more, actually, I want to talk specifically about the
23 factors the Court has to evaluate here, but before I get to
24 that I just want to make sure the Court is aware the Pretrial
25 Services Report reflected that Kyle didn't report a handgun, a

1 rifle and a dagger to the pretrial services officer. His
2 understanding and recollection is that he was asked about
3 handguns or guns, firearms. The handgun and rifle are
4 airsofts; they are not actual firearms. He would testify that
5 the dagger, which is -- it's a World War II dagger. It's a
6 piece of war memorabilia. He did not understand he needs to
7 disclose that. And he did disclose the handgun and rifle, the
8 actual ones that he did have.

9 Speaking to the factors the Court must consider, the
10 nature and circumstances of the offense, they're alleging that
11 Kyle possessed these weapons. However, there's no evidence he
12 intended to use them or he threatened anyone with them or that
13 he did anything with them at all other than have them. Whether
14 they're actually machine guns and capable of being fully
15 automatic, and whether Kyle knew that they were, we submit
16 those are subjects that the government has to prove beyond a
17 reasonable doubt and are subject to dispute.

18 We have not had an opportunity for our own expert to
19 review these or even the government's reports on these matters,
20 and the government's motion on knowledge relies upon evidence
21 that is more than a year old and references a conversation in
22 2020. They're using old Internet searches and old
23 conversations to try and demonstrate knowledge of something
24 that they found in 2022. So, we submit the government has a
25 knowledge problem here. We will leave that up to a jury or a

1 court at a later date.

2 The weight of the evidence, your Honor, I somewhat
3 addressed that, but, as Attorney Levin pointed out, that is the
4 least important factor in the Court's analysis. The government
5 relies upon an allegation that Kyle tried to sell an AK-47
6 again in July of 2020. That is incredibly far from probative
7 about his mental state regarding these two firearms in 2022.

8 The government relies upon discussion of racially
9 motivated mass shootings, and, as disgusting as those things
10 may be, that's just what they were, discussion, and, again, in
11 July of 2020. The government tries to burden shift by saying
12 that Kyle hasn't renounced those beliefs. He does here, not
13 only on the record, before your Honor, in front of his entire
14 family, in front of the government.

15 But he does continue with his mental health struggles;
16 we admit that. However, it appears the government tries to
17 turn that into a sword to say that this honorably discharged,
18 decorated veteran of combat on behalf of the United States
19 Military, who could legally possess weapons in general and has
20 mental health issues related to his combat, the Court can
21 somehow use his mental health difficulties as a reason to keep
22 him behind bars. Mr. Dearborn is here today to reflect that
23 this is someone who needs help, not incarceration.

24 The government also asserts that Kyle lacked candor
25 regarding marijuana and his marijuana use. We submit that the

1 statements he made do not show he was not telling the truth.
2 Again, nobody -- the government can't say when the last time he
3 ever smoked marijuana was, and their searches about whether
4 evidence about cultivating marijuana go back to 2020. So,
5 again, they're not remotely probative of who Kyle is right now.
6 And there's no evidence that he ever acted on that. Looking up
7 on the Internet how to grow marijuana, whether -- and he's
8 lived in Salem, your Honor. The marijuana cultivation industry
9 in Massachusetts has exploded. He lives on the New
10 Hampshire-Massachusetts line. I represent several clients who
11 are in that line of business legally in Massachusetts. But,
12 importantly, the government can't say he ever actually did
13 anything to grow marijuana. This is the epitome of the
14 government's reasoning, rationale or case to keep Kyle
15 incarcerated.

16 And I want to talk about something that is concerning
17 to me, as Kyle's defense attorney. On July 1 two agents went
18 to speak with Kyle's girlfriend. Ms. Holodowska is here today,
19 and she would testify that she felt the agents were there to
20 manipulate her in several ways, to make Kyle look badly in her
21 eyes, to get her to offer evidence against him. They told her
22 that Kyle was just manipulating her, she is so young and that
23 her life is just starting. They told her Kyle's sister is an
24 enabler. They showed her messages from other people about
25 Kyle. They told her Kyle might try to use her in the future,

1 and they told her Kyle's relationship with her was not real,
2 and in the end they asked her if this is the guy she really
3 wants to be with.

4 If I had a defense investigator speak to a government
5 witness that even came remotely close to saying anything like
6 that, I expect I would be in front of your Honor within 24
7 hours, along with my defense investigator. But, again, this is
8 what the government is doing to try and keep Kyle incarcerated.
9 He's a young man who needs help. We're asking the Court, as it
10 must, to consider all reasonable, least-restrictive
11 alternatives to detention.

12 This is not a presumption case. Detention on
13 dangerous grounds, as courts and Congress has said, is limited
14 to only particularly dangerous defendants.

15 And I don't want to sound too preachy, your Honor, but
16 we, as a country, sent a boy to war. We asked him to put his
17 life at risk for our country, and he came home damaged. This
18 is what we see in this case, a boy that is now growing into a
19 man, who's had very real and substantial internal injuries. He
20 served our country with honor and he is still -- he just turned
21 23 -- he is still growing up. He put his life at risk for our
22 country. He was changed by that experience.

23 As he's grown, and this is why the evidence of any
24 white nationalist or racist material has decreased over time,
25 he's growing up and he's growing away from that, which is why

1 he absolutely denounces it now; and the farther he gets away
2 from his combat experience and his time in the military and he
3 grows up, he recognizes how awful those thoughts and statements
4 were.

5 We ask the Court to place him on electronic monitoring
6 with a third-party custodian and for all the other conditions
7 that we've offered the Court and any other conditions the Court
8 would suggest.

9 I've been going on for a while now. I'm going to
10 conclude at this point, but I'm open to answer any questions
11 your Honor may have.

12 THE COURT: Thank you. And I'm sure I'll have some
13 questions, but I'm going to hear from Attorney Krasinski first.

14 MR. KEEFE: Thank you.

15 MS. KRASINSKI: Thank you, your Honor. I think I want
16 to start by just sort of taking a step back and talking about
17 how we got here and then, after going through that, I want to
18 address some of my colleague's points that he raised.

19 So, this all started because in August of 2022 the FBI
20 gets this report that there's this guy, he's a part of a
21 militia group, the New England Minutemen, and that it's
22 reported to the FBI that he's kicked out of this group because
23 he's too violent, essentially. In their words he's probably
24 going to follow in the footsteps of Dylan Klebold, and that's
25 one of the Columbine High School shooters. He didn't like the

1 fact that we support training and patience. He wanted to mag
2 dump a crowd of Black Lives Matter protesters, especially the
3 darker ones.

4 So, this is what the FBI is told, and the first thing
5 they have to do is sift through a bunch of really important
6 issues. First, is this a real report, you know, is the
7 information that they've received accurate? If it is, who is
8 this person.

9 THE COURT: What was the date on that, did you say?

10 MS. KRASINSKI: It's August of 2020. I don't have the
11 exact date.

12 THE COURT: Okay. Thank you.

13 MS. KRASINSKI: And then, if they can identify the
14 person, if they can determine that the report is actually based
15 in some sort of fact, then they have to do sort of the second
16 step of is this person just saying distasteful things, or is
17 this person planning to commit an offense, is this person
18 already committing an offense?

19 And so, the FBI sort of undertakes this big task to
20 figure out what in the world is going on and does it even
21 amount to anything. So, they start investigating, and
22 ultimately they were actually able to confirm that that is why
23 he was no longer in New England Minutemen, and they were able
24 to do that by one of the notes the defendant had written in his
25 phone, right? So, not something for public consumption, not a

1 text to someone, but his own personal note, where he said he
2 was resigning from his team leader position and leaving the New
3 England Minutemen.

4 And I'm going to quote now: The first time we got
5 opposition we cower. I have heard every excuse in the book.
6 We hide when, a curse here, gets real, and we bow down to BLM
7 and the government. We removed a patriot from the group
8 because he broke the law. You see how f'ing ironic that is?
9 Peace is not an option for me. I guess I'm an accelerationist.
10 The people who ruined our country need to be executed.

11 And it goes on a little bit longer. And the date of
12 that is August 7th, 2020.

13 So, the FBI is able to identify that the individual
14 that was being reported about was Kyle Morris. They were able
15 to at least confirm that he wasn't in the militia group anymore
16 because he had sort of more radical views than the militia.

17 And then, in July of 2020, so I guess around the same
18 time, in July of 2020 the defendant is in a Telegram group with
19 a few other people, and that's where he made some of the
20 statements that are in the government's pleading, and those
21 include, I'm at the point where I would support mass
22 deportation and genocide for those who don't leave, SS rushing
23 the ghetto, blasting anything that moved.

24 I know the Court is familiar with the discussions of
25 sort of these ten lone-wolf attacks --

1 THE COURT: Yes.

2 MS. KRASINSKI: -- culminating in one big one. And in
3 August of 2020 he also in that group, you know, actually sort
4 of discussed his family's, well, specifically his sister's
5 impact on him, and I'm going to quote again. After my sister
6 stopped talking to me I really tried to see it from her point
7 of view. I tried to de-radicalize myself, if you will. I did
8 that for two days. I watched Holocaust documentaries and
9 listened to blacks talk about their issues. Not only did my
10 views not change, but now they're more solid than they ever
11 were. It's utter BS and constant garbage that they spit out.
12 We have kept the exact same narrative for hundreds of years. I
13 encourage you to put yourself in the enemy's shoes. I want
14 death squads. Hail victory.

15 So, the FBI is looking at all of this, and they're
16 still trying to evaluate are these just statements? Is this
17 just, as the defendant has put it, edgy humor, dark humor, or
18 is it something more sinister or more serious? And so, the FBI
19 starts getting notifications that the defendant is starting to
20 buy guns.

21 And I agree with Mr. Keefe that, setting the marijuana
22 issue aside, there's nothing that prohibits him from possessing
23 a firearm, but I think it's also fair to understand that, when
24 reviewing these messages, and then seeing that in October of
25 2020, in February, April, and May of 2021 he's going out and

1 buying multiple firearms, I mean, that's concerning.

2 And then in March of 2021, while the FBI is still
3 trying to sift through all of this, they learn that Mr. Morris
4 applied for a job with the Department of Homeland Security
5 Federal Protective Services essentially through a contractor to
6 work as security in a federal building. Now, this also raises
7 concerns for the FBI, because here's someone who has made
8 statements about blowing up a state building who is now
9 applying for a job to work in a federal building. As with many
10 federal jobs, I suspect you had to do this, too, you have to
11 fill out the SF-85, and Morris did that, you know, background
12 information, information about his family, his job and answer a
13 lot of questions. And FBI worked with Homeland Security to set
14 up a ruse interview based on this, and they set up sort of a
15 ruse job interview where a task force officer and a Homeland
16 Security officer sat down with him and went over his answers to
17 the SF-85. They reminded him that, along with filling out the
18 form itself, that, when talking to them, if he didn't tell them
19 the truth a lie could subject him potentially to charges under
20 1001, and then they proceeded to go through the form with him
21 and asked him very specific questions, and I just want to talk
22 about two of those.

23 So, during the conversation one of the task force
24 officers asked him about social media applications, because
25 they had learned that he had been using a number of encrypted

1 applications, Telegram, for example, and asked him about that
2 and social media, and Mr. Morris denied using any encrypted
3 applications. And I want to be clear he was asked about
4 specific applications: Do you use Telegram? No. Do you use
5 WhatsApp? No. Do you use Signal? No. Now, we know this to
6 be false, because we've seen his phone, and we had source
7 reporting, and we know he was using Telegram.

8 And one of the other areas of questioning was whether
9 or not he was associated with any extremist groups or gangs,
10 and he denied membership in any extremist groups or gangs.
11 But, again, he was asked about very specific groups. He was
12 asked about a whole list of groups, and he was specifically
13 asked whether he had an association with NSC-131, and he said,
14 No. But we know from source reporting that he was a member of
15 the probate (ph) chat Telegram group for NSC-131, which I sort
16 of liken to pledging a fraternity. And so, can I stand here
17 and say he was ever a full member of NSC-131? I can't. But
18 just like if you pledged a fraternity or a sorority, you would
19 have an association with that fraternity or sorority. Being in
20 this probate (ph) chat for NSC-131 is equivalent. So, saying
21 that he had no association was not correct.

22 And at the end of this they sort of call him out on
23 it. They ask him, Who's Koyle (ph), which is the online
24 pseudonym that he uses, and he ultimately confirms it's him.
25 He admits that he lied to them, and he very quickly, when they

1 ask if he'll show them the leader of NSC-131, sort of shows
2 them on his phone really quickly and then puts his phone away.
3 And so, we know that the things that he initially said during
4 his interview were wrong. They were lies. So, that's May 26th
5 of 2021.

6 A few weeks later, in June of 2021, Morris, Mr. Morris
7 throws away two computer towers, so maybe 2 1/2 weeks after
8 this interview, and the FBI goes and they do a trash pull. The
9 towers at this point are gone. They get there I think two or
10 three days after he put the stuff in the trash, but his smashed
11 cell phone is still in the trash. So, they seize the phone,
12 and they ultimately are able to examine the phone. But this
13 isn't a quick process. It's a smashed phone. They have to
14 send it off to be extracted, and then, when that process is
15 finally done, they have to take the time to go through
16 everything in the phone, and there were some things in the
17 phone that they found that discussed fully automatic weapons.
18 And I know your Honor is familiar with some of that, but there
19 are more than what was in sort of the government's pleadings,
20 including talking about, We could shred with a full-auto .308,
21 full-auto AR-10 with that mounted on an armored truck, and I
22 have armor-piercing rounds.

23 So, once ATF or, excuse me, FBI has had the time to
24 actually get the phone examined and go through all the contents
25 of the phone, they finally are able to get a warrant to search

1 his house. They get that warrant in February of this year, and
2 they execute that warrant on February 16th of this year. And
3 upstairs in the house there is essentially a gun room, about 25
4 firearms. ATF is there, and they do a cursory review of some
5 of the firearms. They identify two, the ones that are listed
6 in the indictment, as potentially full auto they need to get
7 examined further.

8 So, the FBI sends those to their lab, where they are
9 examined by an expert who prepared a report. The report is
10 dated May 17th of this year. I double checked today the date I
11 received that, and I received that lab report on May 25th of
12 this year, identifying that both of those firearms are fully
13 automatic. It also identifies that one of those has a barrel
14 that's too short, but it's so small I'm not sure what you would
15 notice. It's about a quarter of an inch too small. So,
16 definitely not charged with that. I don't think that there's
17 any way that anyone would know that that barrel length was
18 shorter than it ought to be.

19 So, May 25th of this year is when we have sufficient
20 evidence to charge him with a crime. The grand jury returns an
21 indictment on June 13th of this year.

22 So, I mean, I know that there were some questions
23 about timing, and investigations take a long time. Once the
24 government had the reports that these were fully automatic
25 firearms we moved forward.

1 And I just very, very briefly want to address the
2 issue about the expert reports. I just want to be very clear.
3 I take my discovery obligations very seriously. The expert
4 report has already been disclosed, as has the expert's CV, and
5 I've already made the expert disclosure, so that's done.
6 Certainly, if the defense wants time to have their own expert
7 examine these, I don't have any issue with that, but to the
8 extent that there was any miscommunication about those reports
9 not being disclosed, they have been.

10 So, that's sort of what brings us here today. And I
11 think the first thing I want to address is just the marijuana,
12 because I want to be very clear. I really don't care much
13 about whether or not he smoked marijuana. What I care about is
14 that when he spoke to Probation he said he had used marijuana
15 five to six times. That is not consistent with what Attorney
16 Keefe said today, even, where he had previously smoked a lot of
17 marijuana. So, I really don't care if -- if he had disclosed
18 to Probation that, I've smoked five times a day for five years,
19 I'm not sure that would move the pendulum either way when we're
20 looking at the factors in the Bail Reform Act. But I do think
21 the first time you're faced with federal probation and you're
22 not candid about your marijuana use, that raises concerns for
23 me that you're not going to be candid about other things, about
24 things that are more significant, things that are going to make
25 it really difficult for Probation to make sure that you're

1 complying with your conditions of release, and that's what I
2 care about about the marijuana.

3 I also want to address Mr. Morris's family support. I
4 applaud his family. I think every single person and,
5 particularly, every defendant deserves a family that is willing
6 to support them through the hardest times, and I am glad that
7 they're here today. My concern, when I'm looking at the Bail
8 Reform Act, is that this family support was in effect
9 throughout this entire period, and it wasn't a stabilizing
10 factor for him. It's not something as if they've come in now
11 and so all of a sudden something is different. They were here
12 the whole time. They were here when he possessed these machine
13 guns. They were here when he was in New Hampshire and
14 radicalized. So, while I applaud them, I just don't see that
15 as a factor that weighs in favor of release or demonstrating
16 that he'll comply with conditions, because it didn't serve as a
17 stabilizing factor for him before that.

18 And I think one of the biggest issues I want to
19 address is this idea that he's matured and grown away from his
20 white nationalist and these other extremist views. In his
21 interview, the ruse interview, which I just want to make sure I
22 have the date correct, was in May of 2021, Morris admitted to
23 agents that he was a white nationalist, and in June of this
24 year -- no, that timing is incorrect. In February of this
25 year, when agents executed the warrant, all of these firearms

1 were found in his home where there were two Nazi flags hanging,
2 a swastika, and I'm going to get the name of the other flag
3 wrong, a white sun or -- but it's essentially a black flag.
4 It's pictured in my motion, and it stems from, as I understand
5 it, a tile mosaic on a floor of a building that was important
6 to the Nazis during World War II. And I guess I should also
7 add there was a framed picture of Hitler in the gun room.

8 And so, that does not indicate to me someone who has
9 stepped away from these extremist views. It's one thing after
10 you've been arrested and charged with a crime to stand before a
11 court and disavow these views, but I think what is more
12 indicative is what you're doing in private, and what this
13 defendant is doing in private is storing his firearms with two
14 Nazi flags and a framed picture of Hitler. And so, I would
15 suggest that the evidence shows that he really has not moved
16 away from these views.

17 Now, I appreciate that many of these statements are
18 old, but I think what's really concerning to me is this
19 defendant's involvement in these online communities that use
20 dehumanizing language and glorify violence, and that he was
21 doing that himself, and I fully appreciate that many people who
22 are involved in some of these online communities don't go out
23 and commit acts of mass violence. I get that. But I think
24 that it's fair to say that many people who do have been
25 involved in these communities. They sort of produce conditions

1 of violence. And I think if that was just, that was it, that
2 was one factor by itself, I don't think that would support an
3 inference of danger to the community, but I don't think we can
4 look at everything else in a vacuum.

5 So, he has made these incredibly concerning statements
6 to others, he's made incredibly concerning statements privately
7 in more of his notes, and I'll just briefly go through a few of
8 those. This is a portion of one that is -- it's a letter to
9 law enforcement, and it reads: Will you let your fellow
10 officers know that they are being sold down the river by their
11 corrupt masters. Don't come to kill me, because I don't want
12 to kill you, but if you do come, you may succeed if you get
13 lucky, but don't count on luck, because it will probably be
14 hard, damned hard. And later in that note he wrote, Here's
15 what you can expect if you push us to no other defense:
16 ambushes of SWAT Teams and the wholesale slaughter of the all
17 jackboot thugs who have murdered innocent Americans on the
18 orders of their socialist masters, targeted assassinations and
19 kidnapping of anti-Constitution judges and assassinations of
20 anti-American and anti-gun politicians. And that is from
21 September of 2019.

22 And around the same time frame there are notes, again
23 private, that talk about bombs. So, for example, there's a
24 note about making sure that the ammonium nitrate for an
25 ammonium nitrate bomb isn't the nonexplosive fertilizer. You

1 have to make sure that it's the ammonium nitrate and diesel
2 fuel mixture.

3 And so, there's concerning language to other people,
4 there's concerning language in his own sort of private almost
5 journaling, and it's that in combination with significant
6 mental health issues, in combination with the possession of not
7 just firearms but with machine guns that demonstrate that he's
8 a danger to the community.

9 And so, then I go and I ask myself, okay, but are
10 there conditions that can mitigate that risk? And so, my
11 biggest concern about whether there are conditions that can
12 mitigate that risk is that this defendant doesn't seem to
13 appear to accept authority. So, what agents reported was that
14 when he was arrested he basically told the FBI that they were
15 kidnapping him, that the FBI had no authority over him, that
16 federal firearms laws are paper laws, and that the only reason
17 he went with them is because they had bigger sticks.

18 Now, I want to be very clear. Mr. Morris disputes
19 saying that. In a recent jail call what he said was, Well,
20 that's not what I said. What I said is that all authority is
21 illegitimate. So, if he's someone who either believes that the
22 FBI is illegitimate or all authority is illegitimate and he
23 came in and minimized something as minor as marijuana use to
24 Probation, that gives me concern that he is not going to
25 respect or comply with any conditions this Court could set.

1 The whole sort of smashing of the cell phone thing I
2 think weighs that same way for me. You know, he says, Well, my
3 phone broke in this car accident. Well, the car accident was
4 about eight months before he smashed his cell phone. So, then
5 you think, okay, well, why then? Why did he smash the cell
6 phone and throw it out then, assuming it really did break then,
7 which I can't say whether it did or didn't? I think it
8 probably did break then. The smashing of the cell phone and
9 throwing it away happened at the same time as throwing away two
10 computer towers. There was other trash in there that, you
11 know, had I guess I'll call it Nazi doodles, doodles of
12 swastikas and other things like that, but, more importantly, it
13 happened not that long after he was confronted by FBI about
14 some of his rhetoric and his association with NSC-131. It was
15 about two weeks after that. So, it seems to me to be a half
16 truth, and that's not someone that Probation can supervise,
17 someone who's providing half truths.

18 And so, for all those reasons I don't think there are
19 any conditions or combination of conditions that can reasonably
20 protect the safety of the community. Thank you.

21 THE COURT: Thank you. Attorney Keefe, before I ask
22 any questions, do you want to address any of those points
23 specifically?

24 MR. KEEFE: Very briefly, your Honor. First, on the
25 discovery issue, I didn't mean to intimate in any way that the

1 government wasn't complying with its discovery obligations. My
2 office has received discovery, and we received over 1,500 pages
3 this week. What I thought I said was I haven't had the
4 opportunity to review that at this point. We just got a
5 discovery -- the government was great, they got a bulk of it to
6 us, so I wasn't trying to suggest that the government hadn't
7 complied or weren't even ahead of schedule on its discovery
8 disclosure.

9 THE COURT: Thank you for that clarification.

10 MR. KEEFE: The big picture, your Honor, we -- the
11 government is using horrible things attributed to my client
12 from the summer of 2020. That is the bulk of their argument.
13 The notes that they read to you, the other statements that they
14 read to you were from 2020 and 2019, two years ago. What the
15 government can't allege, and they didn't, is that Kyle has ever
16 done anything to harm anyone, that he's ever attempted to harm
17 anyone, or that he's actually taken any steps to physically
18 prepare to harm anyone, because he hasn't, and that alone,
19 those two factors in combination, should demonstrate that he's
20 not a danger to the community as he sits here in front of you
21 in July of 2022.

22 The government must demonstrate to this Court that
23 there are no conditions whatsoever. And, again, if we're
24 focusing the argument on dangerousness, the case law states
25 that detention on dangerousness is reserved for a very small

1 group of people, and Kyle is not one of them. They can't say
2 outside of combat that he's ever harmed anyone. And he was a
3 combat engineer; he was involved with explosives. The web
4 search that the government talked about was from when he was in
5 Afghanistan as a bomb technician, specifically investigating
6 road clearance for IEDs, your Honor.

7 The last time that the government can say that he
8 espoused anything that was of a white nationalist view was in
9 May of 2021, when during this ruse interview the government
10 agents spoke with him. Notably, Kyle could have said, Hey, I'm
11 out of here, I'm not talking to you guys, but he didn't. He
12 sat there and he talked to them.

13 The government posits that he threw away two computer
14 towers, but we don't have any evidence, physical evidence of
15 it. I know the response is, well, if they threw them away the
16 government can't have any evidence, but if the Court wants to
17 detain him on that kind of information we need more than just
18 surveillance witnesses saying that they believed that he threw
19 away two computer towers.

20 I also want to address the timing issue again briefly.
21 The government talked about not getting its expert report until
22 the end of May, when indicting at the next available grand
23 jury. In the government's response to Attorney Levin's motion
24 on page 3, it said that, Agents believed after field tests the
25 firearms were likely fully automatic. ATF agents. The

1 government did not seek a complaint at that time. They didn't
2 seek to present that information to either the magistrate or an
3 Article III judge to seek an arrest warrant, although they had
4 ATF agents who would be able to testify that they believed,
5 based on a field tests, that the firearms were fully automatic.

6 I could keep reiterating the things I've said, and I
7 don't want to do that, your Honor, but the last thing I do want
8 to address is the authority issue that the government raised.
9 There is a telephone call recording of Kyle saying that what he
10 told the agents was, All authority is illegitimate. First,
11 that reflects why we should with great skepticism rely upon
12 police reports when they try to quote people. Secondly, that
13 was a metaphysical quote or a philosophical statement, not one
14 about whether this Court or agents can put him in handcuffs and
15 take away his liberty. Kyle has spent the last several weeks
16 in a jail cell. He's quite aware of this Court's authority.
17 He's demonstrated nothing but respect before your Honor and
18 before Judge Johnstone. He understands very well that he is
19 subject to every last ounce of this Court's authority, and
20 whether that's he stays in jail or he gets out of jail and, if
21 he does get out of jail, whether he goes back to jail if he
22 violates any single condition. That reality exists within him
23 as a 22-year-old who just turned 23, who spent the last several
24 weeks incarcerated.

25 So, I can answer any questions your Honor may have.

1 THE COURT: Thank you. So, I have a couple of
2 questions, just factual questions, and then I want to address
3 what you're actually proposing, because that's not something
4 that I received ahead of time, so I haven't had a chance to
5 review it.

6 MR. KEEFE: Yes.

7 THE COURT: And I think it may be Attorney Krasinski
8 can better answer this question. When is the photograph of --
9 I'm going to call it the gun room, just because that's how you
10 referred to it in your pleadings. I hope nobody has an
11 objection to that. When was that photograph of the gun room
12 taken?

13 MS. KRASINSKI: So, that photograph was taken during
14 the February 16th, 2022 search warrant.

15 THE COURT: Okay. Thank you. And in that picture I
16 can't see the framed photograph of Hitler, but was that also in
17 the gun room at that time on that date?

18 MS. KRASINSKI: Yes, your Honor.

19 THE COURT: Okay. Thank you.

20 MS. KRASINSKI: Sort of the reason that agents noticed
21 it was because there was also one of the agent's business
22 cards, one of the agents that had met him in the interview a
23 few months before, right next to the picture of Hitler. And
24 so, you know, the agent said, And my picture was -- or my
25 business card was right next to this picture of Hitler. So,

1 yes, it was in there at that time.

2 THE COURT: Thank you. Okay. I'm sorry, Attorney
3 Keefe, because these questions probably are really best
4 answered by Attorney Krasinski. You can sit, if you'd like, or
5 you can remain standing. It's up to you.

6 MR. KEEFE: Sure.

7 THE COURT: The note on his cell phone that you
8 referred to about the bomb-making materials --

9 MS. KRASINSKI: Yup.

10 THE COURT: -- when was that written?

11 MS. KRASINSKI: So, that was April 27th, 2019.

12 THE COURT: So, he was still deployed at that time?

13 MS. KRASINSKI: That makes sense, but I don't know
14 that I have those dates.

15 (Pause)

16 MS. KRASINSKI: Yes, your Honor.

17 THE COURT: Okay. Thank you. And, Attorney Keefe,
18 the statement that your client discussed on the jailhouse
19 recording, on the call, All authority is illegitimate, he
20 doesn't deny saying that during his arrest; is that right?

21 MR. KEEFE: Correct.

22 THE COURT: Okay. That was the context. That was
23 said to the FBI agents while he was being arrested?

24 MR. KEEFE: If I could just have a moment, your Honor?

25 THE COURT: Of course. Take your time.

1 (Counsel conferred with defendant)

2 MR. KEEFE: It's my understanding, your Honor, that it
3 was in the vehicle after his arrest as he was being brought to
4 the courthouse, and my client was not speaking specifically to
5 the FBI's authority or the Court's authority to do anything to
6 him but authority in general as to one human being's ability to
7 impose their will on another human being. Quite obviously,
8 he's in the United States Military. He recognizes that a
9 superior gives an order and he has to follow it. He lived like
10 that for over three years or four years. He recognizes quite
11 clearly that -- and he didn't resist arrest. They told him he
12 was under arrest. He actually offered to turn himself in that
13 day. So, he recognized the law enforcement's authority to
14 exercise an arrest warrant on him, arrest him, bring him before
15 this court. So, he adamantly asserts that was not in any way
16 meant to say I'm not going to abide by any rules, the
17 government has no control over me, and I can do what I want,
18 not meant in that way at all.

19 THE COURT: Okay. And the handgun that was recovered
20 during his arrest -- there was a handgun that was recovered
21 when he was arrested, correct? I'm just trying to get the -- I
22 know there's been a lot of confusion about the inventory.

23 MR. KEEFE: If Attorney Krasinski wants to address
24 that --

25 THE COURT: Okay, Attorney Krasinski.

1 MS. KRASINSKI: My understanding is he was arrested
2 outside. In terms of the FBI arrest team, there weren't any
3 firearms on him at the time of the arrest. They didn't go in
4 the house at that time.

5 THE COURT: Okay.

6 MS. KRASINSKI: So, my understanding is sort of how
7 this discussion about firearms and violent weapons came to
8 light was during his interview with Probation he disclosed two
9 firearms when asked about firearms and ammunition, didn't talk
10 about airsoft guns or that dagger, knife. And then, as I
11 understand it, the Probation Office contacted his girlfriend to
12 confirm, and she took pictures of items in the house, and
13 that's how Probation was made aware of these additional items.

14 THE COURT: Okay. And so, the handgun that was
15 located in the defendant's nightstand -- and I know there was
16 originally some dispute as to whether he had disclosed it. I'm
17 not getting to that, so we don't need to worry about that right
18 now. My question really is did the defendant own that handgun
19 when the FBI first came in and confiscated the other weapons,
20 if you can answer that question?

21 MR. KEEFE: Are you asking the government or me, your
22 Honor?

23 THE COURT: I'm asking the government if they know.

24 MS. KRASINSKI: What I can say is they didn't find it,
25 if he did own it. They seized all firearms in the house that

1 they found. The airsoft rifles they did find and leave because
2 they're not firearms. The handgun, I can't tell you if he
3 owned it beforehand; all I can say is they didn't find it, if
4 he did.

5 THE COURT: Okay. Understood.

6 Attorney Keefe, do you have anything you want to add
7 to that?

8 MR. KEEFE: Out of an abundance of caution and the
9 defense attorney in me saying that it was legally possessed at
10 that time.

11 THE COURT: Understood. And nobody is arguing that it
12 wasn't. I'm just trying to get a handle on what was going on.

13 MR. KEEFE: Understood, understood.

14 THE COURT: And I know that, Mr. Morris, these
15 questions might seem like I'm asking about insignificant
16 things, but they've given me so much information, things I
17 would have normally asked about. I'm just trying to tie up a
18 few loose ends.

19 THE DEFENDANT: I understand, your Honor.

20 THE COURT: Okay. So, now I want to talk, Attorney
21 Keefe, about your actual proposal. You went through it very
22 quickly at the start of the hearing.

23 MR. KEEFE: Yes.

24 THE COURT: Can you slow down a little bit and tell me
25 exactly what you're proposing? And I'm going to have some

1 follow-up questions about it.

2 MR. KEEFE: Sure. First and foremost, electronic
3 monitoring.

4 THE COURT: Yes.

5 MR. KEEFE: Secondly, that his grandparents, who are
6 here today and live two miles away, be third-party custodians.
7 And on top of that, your Honor, we would obviously ask for and
8 agree to a no-firearms condition, no Internet.

9 THE COURT: Slow down for a second. So, the
10 no-firearms condition, is that no firearms possessed by your
11 client or anybody in the household?

12 MR. KEEFE: By anyone in the household. There would
13 be no firearms in the household.

14 THE COURT: I understand he has renters.

15 MR. KEEFE: He has, and it's my understanding that
16 none of them have firearms.

17 THE DEFENDANT: None of them have firearms.

18 THE COURT: Okay, go ahead. No firearms. What else
19 after that?

20 MR. KEEFE: No Internet, no use of the Internet by
21 him.

22 THE COURT: Okay.

23 MR. KEEFE: Be subject to drug screens, as Probation
24 deems appropriate.

25 THE COURT: Okay.

1 MR. KEEFE: Comply with any mental health or substance
2 abuse counseling, as recommended by Probation.

3 And the only thing I would like to add to the standard
4 conditions is that that be in coordination with the Veterans
5 Justice Program Coordinator, Mr. Dearborn.

6 THE COURT: Okay. And my understanding is that your
7 client's currently working as a DoorDash delivery driver? Is
8 that correct?

9 MR. KEEFE: He had been, your Honor, yes, off and on
10 as a DoorDash driver.

11 THE COURT: Okay. And what would you propose he do
12 for work if he were on supervised release, electronic
13 monitoring?

14 MR. KEEFE: We would be open to a condition that the
15 Court require him to be employed or actively seek employment.
16 He got arrested several weeks ago, so the world was kind of
17 flipped upside down, but working to maintain regular and steady
18 employment and putting his activities towards that he would
19 like to do, if given an opportunity.

20 THE COURT: Thank you. If you can answer, what kind
21 of services can Mr. Dearborn coordinate? How does that work?
22 I'm just not familiar with the relationship.

23 Mr. Dearborn, if you wouldn't mind.

24 MR. DEARBORN: I'm Chris Dearborn. I'm the Veterans
25 Justice Program Coordinator, employee of the VA Medical Center

1 in Manchester, New Hampshire. I would make a referral that he
2 be engaged in mental health treatment either at the Manchester
3 VA or the Vet Center, which is sort of a sister program to the
4 Manchester VA. It's also a federal organization that provides
5 mental health treatment to veterans exclusively by licensed
6 therapists. I think we would coordinate services either at one
7 or the other program, depending on who would have the most
8 robust treatment program for Kyle. It could include drug and
9 alcohol counseling, counseling for depression, panic attacks
10 and ongoing psychological assessment to either rule out or
11 endorse a diagnosis of PTSD.

12 THE COURT: What would the timeline look like for
13 that? I mean, I know it's difficult to get services right now.

14 MR. DEARBORN: So, I did speak with a therapist who's
15 willing to take the case at the Manchester VA. I think, given
16 the nature of this case, we would try to fast track that as
17 much as we could. I was in communication with the staff in the
18 Veterans Center today. Kyle was in the process of starting the
19 treatment at the Vet Center. It stopped when he stopped
20 answering his phone after the arrest, it appears. I spoke with
21 staff there, who said that they would just put the referral to
22 start mental health treatment on hold, however, he was assigned
23 a therapist to do an intake at the Vet Center in Hooksett, New
24 Hampshire.

25 THE COURT: So, in real time, though, when would he

1 likely get in for a first appointment? Are we talking months,
2 are we talking weeks?

3 MR. DEARBORN: Probably four to six weeks, your Honor.

4 THE COURT: Okay.

5 MR. DEARBORN: Best guess.

6 THE COURT: Okay. And if he's held, if he's being
7 detained, is there any role for Veterans Justice and the VA
8 during his detention period, if he's detained pending trial?

9 MR. DEARBORN: Yes, your Honor. We have a -- he had
10 an opportunity to meet our Reentry Peer Support Specialist, Mr.
11 Davis. Mr. Davis and myself would work with him in regards to
12 make sure that all clinical and other supports were available
13 to him upon release from jail, continue to coordinate with the
14 Court and Probation to try a smooth transition out of jail.

15 One example of that is that he was not yet enrolled at
16 the Manchester VA. He did fill out paperwork or gave us
17 information to complete paperwork so we could get him enrolled.
18 I did inquire about the status of his enrollment. Based on a
19 quick review of his chart, given his discharge status and the
20 amount of time that he had in the military and his financial
21 standing, he should most likely be eligible for services
22 through the VA.

23 THE COURT: Okay. But we're not sure.

24 MR. DEARBORN: I'm pretty sure, your Honor. It looks
25 good.

1 THE COURT: Okay. Thank you.

2 Okay. We're just going to take a quick break, just a
3 short, maybe five minutes or less, recess.

4 THE CLERK: All rise.

5 (Recess taken from 4:52 p.m. to 5:08 p.m.)

6 THE CLERK: All rise for the Honorable Court. Please
7 be seated. Court is in session.

8 THE COURT: Thank you, everybody. Sorry. I know that
9 was a little bit longer than promised.

10 I just have a couple of follow-up questions. We're
11 trying to deal with this proposal, Attorney Keefe, that -- next
12 time send it over ahead of time, and then we can try to make
13 sure we understand where you're coming from and take a look at
14 it.

15 So, factual question, Attorney Keefe: Was your client
16 living with his grandparents before he purchased the home?

17 MR. KEEFE: He was not, your Honor. He came home --
18 when he was discharged from the Army he was living in that
19 house. I believe it belonged to his -- it belonged to other
20 members of the family, and he ended up living there when he
21 came home, and then he purchased the home.

22 THE COURT: Okay. And has he lived with anyone other
23 than his girlfriend and roommates since he came home from the
24 military?

25 THE DEFENDANT: Yes. When I originally had moved back

1 my mother was living in the home, and I lived with my mother at
2 the time and also my ex. We were, all three, living together.

3 THE COURT: How long were you living with your mother?

4 THE DEFENDANT: Basically up until I purchased the
5 house.

6 THE COURT: And can you remind me when that was? I
7 don't have a note.

8 THE DEFENDANT: I purchased the house in September
9 2020, your Honor.

10 THE COURT: Thank you. Okay. Thank you. You can be
11 seated.

12 Attorney Keefe, so explain to me how the third-party
13 custodian would work if the grandparents are living in a
14 different house.

15 MR. KEEFE: Your Honor, and I did this in another case
16 where my client lived up north, they have the ability, because
17 they live so close, to check in, stop in whenever they want.
18 They have the ability to see and speak to him whenever they
19 want, especially if he's on electronic monitoring. And I would
20 say that it is the threat from this Court that his grandparents
21 would be in trouble with this Court were he to violate. It's
22 kind of the biggest stick in that regard. He loves his
23 grandparents very much. He wouldn't do anything to jeopardize
24 them, their security or anything like that. But they would
25 have the ability to monitor him, either check in several times

1 a day with him, or ensure that he come to their house to check
2 in with him, or formulate any condition the Court would want in
3 that regard, or place any, I don't want to say liability, but
4 responsibility on them.

5 THE COURT: Okay. Oh, and with respect to electronic
6 monitoring are you talking about curfew, home detention, home
7 incarceration?

8 MR. KEEFE: Well, we want him to work. So, first, we
9 have no objection to a curfew and then a curfew combined with
10 GPS electronic monitoring, which would allow him to work in the
11 community and live. But we have no objection to a curfew to
12 ensure the Court and Probation that he's home for, you know,
13 fixed hours every night, but also if he is going to be on
14 electronic monitoring I think it's in his best interests and
15 the Court's best interests that he is working.

16 THE COURT: Okay. So, you are asking for a curfew. I
17 mean, those are the only choices.

18 MR. KEEFE: Yes.

19 THE COURT: You either get a curfew or you get home
20 detention or home incarceration.

21 MR. KEEFE: Then curfew, yes.

22 THE COURT: But you are not open to home detention or
23 home incarceration?

24 MR. KEEFE: My client, as a secondary choice, if the
25 Court's not willing to do the curfew with general GPS, he would

1 be open to home detention at that point. The incarceration
2 with his mental health issues are exacerbating those, so he
3 would be open to, as a secondary option, from a curfew to home
4 detention.

5 THE COURT: Okay. But not home incarceration?

6 MR. KEEFE: I'm never really clear on what the
7 difference is between the two.

8 THE COURT: So, for one of them he can leave; for the
9 other he's not allowed to leave his house, except for medical
10 appointments, I think medical and legal appointments. We'll
11 hear from Probation about this.

12 THE PROBATION OFFICER: So, detention, your Honor,
13 they can go to employment, they can go to counseling, they can
14 go to court appearances. Home incarceration is essentially
15 they're more of a lockdown, and they can only leave the
16 residence for court appearances, see their attorney, but
17 essentially that's it, your Honor.

18 THE COURT: Thank you.

19 MR. KEEFE: And if the Court's not willing to do home
20 detention, I think my client would avail himself of home
21 incarceration.

22 THE COURT: Okay. Thank you. I'm going to hear from
23 Probation right now about your proposal and any thoughts or
24 concerns they might have.

25 And then, Attorney Krasinski, I'm going to give you an

1 opportunity to talk as well.

2 MS. KRASINSKI: Thank you, your Honor.

3 THE PROBATION OFFICER: Thank you, your Honor. So,
4 unfortunately, we didn't receive defense's new release plan.
5 We were under the impression that the defendant wanted to go to
6 the previous release plan of his residence and not have
7 third-party custodian. So, due to the new release plan, we
8 need to do some further investigation, such as we will need to
9 run the grandparents' record? We need to get their full names,
10 date of birth. We also need to make sure, if the defendant is
11 going to be going to their residence, that there's no dangerous
12 weapons or firearms there. Also, we need to make sure that the
13 defendant's residence is appropriate for cell coverage due to
14 the fact that defense is proposing electronic monitoring; and,
15 most importantly, that all the defendant's firearms and
16 dangerous weapons are removed from his residence, and we will
17 need written verification as well when that is done, your
18 Honor.

19 THE COURT: Okay. Thank you.

20 THE PROBATION OFFICER: Thank you.

21 THE COURT: And you think that might take into mid
22 next week?

23 THE PROBATION OFFICER: Your Honor, yes. I think
24 definitely a full day, for Monday, because we will need to go
25 to the residence, make sure, again, that there is appropriate

1 cell coverage, so at least a full day on Monday, and we could
2 be ready by Tuesday afternoon, your Honor.

3 THE COURT: Okay. Thank you.

4 THE PROBATION OFFICER: Thank you.

5 THE COURT: And, Mr. Morris, I just want to be very
6 clear about something, just because I don't want there to be
7 any confusion. I'm obligated under the law to investigate all
8 of the alternatives to detention, so that's what we're doing.
9 I don't want you to think that I've prejudged whether I think
10 home confinement or electronic monitoring is a good idea or a
11 bad idea. At this point we're just trying to figure out what
12 it would mean, and I'm trying to hear the evidence. So, I
13 don't want to get your hopes up, and I don't want to dash your
14 hopes. This is just a neutral process that I'm trying to
15 figure out what is being proposed and how it might work. Okay?

16 THE DEFENDANT: I understand, your Honor.

17 THE COURT: Okay. Attorney Krasinski, would you like
18 to be heard?

19 MS. KRASINSKI: So, I think, just as an initial
20 matter, it seems unclear to me whether one of the firearms were
21 the defendant's or his girlfriend's in the home. Regardless, I
22 think it would need to be clear if he were released that there
23 could be no firearms in the home. And we talked about him, and
24 we talked about his roommates, but I just want to be clear that
25 would include his girlfriend when she's there and when she's

1 staying over.

2 I mean, I think a no-Internet condition is incredibly
3 difficult to enforce. He can turn over his cell phone, but
4 what stops him from using his girlfriend's cell phone, from
5 using a roommate's phone, from using someone else's laptop? I
6 think those conditions are incredibly difficult to enforce, and
7 so that's not a condition that, for me, gives me any assurance
8 that he is, you know, not going to pose a risk of danger to the
9 community.

10 I hope wherever this process goes that he gets mental
11 health treatment. I think that is incredibly important, so if
12 he is released or at the appropriate point throughout this he
13 needs mental health treatment, and I think that's important.

14 I do have concerns about the residence, I mean, given
15 that he rents out two of his rooms. We know who the roommates
16 are now. I think, if the Court were to release him, there
17 would have to be very strict conditions about new renters.
18 I've not had a situation like that, but something like, you
19 know, Probation would have to approve someone else who moved
20 in. The problem for me essentially, though, comes down to,
21 especially if he is not on home incarceration -- I mean,
22 electronic monitoring can tell us if he's in the home or he's
23 not in the home; it cannot tell us what he is doing. And if he
24 is -- Probation can do their best to try to say, Well, were you
25 at work, were you out looking for a job, and they can -- I

1 think Probation does a great job, but they can only obtain so
2 much information, and electronic monitoring doesn't tell us
3 what he is doing when he's out in the community.

4 And so, for me, it just doesn't give me that
5 assurance. I mean, the closest proposal for me that would -- I
6 don't think it gets there, but I think it's the closest, would
7 be home incarceration, particularly because we don't know who's
8 coming in and out of the residence. The FBI reported that one
9 of the roommates sort of gave a "Heil Hitler" salute as they
10 were leaving, and so that gives me concerns about what's
11 happening in that residence.

12 Ultimately, though, I think, if the Court is inclined
13 to release him, I just think there needs to be incredibly
14 strict conditions about the residence. In fact, I would rather
15 he live with someone who would be a third-party custodian, but
16 I don't think there's been a proposal for a residence that
17 Probation could verify.

18 Just, for me, given the confluence of factors of this
19 case, the danger is almost palpable, given the combination of
20 the guns and the mental health and sort of this white
21 nationalist belief, coupled with sort of this towing the line
22 with Probation, you know, saying things and clarifying, and I
23 just don't see a proposal that ultimately can protect the
24 community.

25 THE COURT: Thank you. One question. You mentioned

1 mental health services, and I agree. Could you describe the
2 mental health services or what kind of program is available at
3 Strafford County, if he stays in detention?

4 THE PROBATION OFFICER: Yes, your Honor. In regards
5 to services, they have the Therapeutic Community Program, also
6 known as the TC Program. It's a three-month substance abuse
7 program. It's not only focused on substance abuse issues, it's
8 also focused on behavioral, cognitive behavioral, thinking
9 errors and whatnot. Also, they provide anger management,
10 parenting classes, life skills, GED. What else? 12-step, drug
11 and alcohol education and -- I think I named them all, your
12 Honor.

13 THE COURT: Thank you.

14 THE PROBATION OFFICER: Thank you.

15 THE COURT: And just going back to Attorney
16 Krasinski's point, Attorney Keefe, you're not proposing any
17 other confinement location or electronic monitoring location?

18 MR. KEEFE: At this point, your Honor, if the Court is
19 uncomfortable with Kyle living at his own house, he would be
20 able, as I understand it, to live with his grandparents, who
21 live two miles away, who would be the third-party custodians.

22 THE COURT: Okay.

23 MR. KEEFE: And I understand all the -- the homework
24 Probation would need to do in that situation, as the probation
25 officer described previously. And we would make -- the family

1 would make themselves completely available and open their home
2 to all investigation that Probation would need to do in that
3 regard.

4 THE COURT: Okay. Thank you.

5 Sorry. Attorney Krasinski, do you have something?

6 MS. KRASINSKI: No. I was just going to say to
7 Attorney Keefe I wonder, depending on what the Court does
8 today, if the Court is going to ask Probation to take time to
9 investigate these things, I wonder if it's also worth making a
10 recommendation for TC, so whatever the Court decides,
11 understanding the Court hasn't made a decision, that if he is
12 ultimately detained he's already on that list.

13 THE COURT: Yes.

14 MS. KRASINSKI: It was just a thought.

15 THE COURT: I appreciate that. Yes. If he's going to
16 stay in detention, I am definitely going to make a
17 recommendation for TC, which is the Therapeutic Community
18 Program that was just described. And so, I just make that
19 recommendation now, that he should be participating in the
20 Therapeutic Community Program, and we should get him on that
21 list as soon as we can.

22 I know that you are probably anxious to find out
23 what's going to happen, and, unfortunately, we're not going to
24 be able to figure that out today, because we didn't know about
25 this plan -- originally we were faced with the choice between

1 just setting you free on your own recognizance or keeping you
2 detained. This is a very different plan, and, as I said, I
3 have a legal obligation to consider every alternative, and so
4 we want to make sure that we do that appropriately. And so,
5 it's going to take a little time for Probation to figure out
6 what these options are and what they would mean and then
7 explain that to me so I understand.

8 So, what we're going to have to do today is we're
9 going to have to deal with a little uncertainty for a little
10 bit longer, and what I'll do is we'll get that information, and
11 we'll call you back in for another hearing. It won't be as
12 long as this, because we've covered most everything, but I want
13 to give everybody an opportunity to look at what we find out
14 and what options might be available and whether they'll work,
15 and I can't say that strongly enough. I don't want everyone to
16 take this as a suggestion that that's what's going to happen.
17 I don't know what's going to happen yet, and so we just need to
18 get all of the facts in front of us before a decision can be
19 made. I hope you understand that.

20 THE DEFENDANT: I understand, your Honor.

21 THE COURT: Okay. So, is there anything further from
22 anybody before we close up for the day?

23 MS. KRASINSKI: Not directly, other than if the
24 Court's continuing the matter, I just wanted to let the Court
25 know that beginning early next week I'll be on extended leave

1 for a few months, and so my colleague Cam Le will be handling
2 this matter while I'm on leave. I'll do my best to fill her in
3 on everything that happened today, but, you know, it won't be
4 me that is here before you, your Honor.

5 THE COURT: Well, I'm sorry to hear that, but I'm
6 happy that you're taking extended leave.

7 MS. KRASINSKI: Thank you.

8 THE COURT: So, good luck to you.

9 Yeah, go ahead.

10 MR. KEEFE: Nothing further, your Honor. I just
11 wanted to put that on the record.

12 THE COURT: Okay. Thank you very much. So, yes, we
13 are going to close up for the day. We will come back with a
14 new AUSA helping us out. She's already filed an appearance, I
15 saw that come through, so I know that she will have access to
16 everything, and we'll get the information we need, and we'll
17 come back and have another discussion. Okay? All right.

18 Thank you, everybody, for coming in.

19 MR. KEEFE: Thank you, your Honor.

20 THE CLERK: All rise.

21 (WHEREUPON, the proceedings adjourned at 5:26 p.m.)
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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of the within proceedings.

Date: 7/15/22

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter